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STATUTES

MISCELLANEOUS

IN THE

Supreme Court of the United States

October Term, 1953

No. ....., Original

STATE OF ALABAMA,

Complainant,

vs.

STATE OF TEXAS, STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF CALIFORNIA, GEORGE M. HUMPHREY, DOUGLAS, MCKAY, ROBERT B. ANDERSON, IVY BAKER PRIEST,

Defendants.

Objections of the States of California and Florida to Motion of the State of Alabama for Leave to File Complaint.

STATEMENT

On September 26, 1953, the State of Alabama filed with this Court a motion for leave to file a complaint against the States of Texas, Louisiana, Florida, and California and George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest. The motion was accompanied by a supporting brief and a copy of the

proposed complaint. In the complaint, Alabama prayed for a declaration that Public Law 31, 83d Cong., 1st Sess., 67 Stat. 29, is unconstitutional and void, and for an injunction restraining defendant States from asserting jurisdiction in offshore waters, restraining the individual defendants from acquiescing in such assertions, and restraining the individual defendants from making payment of certain funds to the defendant States.

Subsequently defendants filed motions for leave to file objections to Alabama's motion for leave to file a complaint. On October 26, 1953, this Court granted defendants' motions and allowed 40 days for the filing of objections. 1953-54 U. S. Sup. Ct. Bull. 34.

The following objections are presented jointly by California and Florida. These objections are directed solely to Alabama's motion for leave to file a complaint and are limited to jurisdictional arguments which make it "plain that no relief may be granted in the exercise of the original jurisdiction of this Court." *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 445 (1945); *Arizona v. California*, 298 U. S. 558, 559 (1936). For that reason, no argument on the merits is being submitted at this time.

OBJECTIONS

1. The complaint does not state a case or controversy within the jurisdiction of this Court in that:

(a) Alabama has not been injured by the passage of Public Law 31.

(b) Alabama does not have standing to challenge the constitutionality of Public Law 31 on behalf of her citizens.

(c) The validity of Public Law 31 is a political and not a justiciable question.

(d) Alabama has no standing to challenge the alleged boundary claims of Texas, Louisiana, and Florida.

(e) Alabama's request for an injunction restraining Texas, Louisiana, and Florida from applying their statutes to Alabama citizens is premature and unwarranted.

(f) Alabama citizens have an adequate remedy in a lower court to test the applicability to them of Texas, Louisiana, and Florida statutes.

2. The United States is an indispensable party and has not consented to be sued.

ARGUMENT

I.

The Complaint Does Not State a Case or Controversy Within the Jurisdiction of This Court.

The original jurisdiction of this Court can be exercised only in "cases" and "controversies" within the confines of judicial power granted by the Constitution. It is not enough that a State is a party. *United States v. West Virginia*, 295 U. S. 463, 470-471 (1935); *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 445-446 (1945). This jurisdictional requirement rests, not upon a "mere formality," but rather "upon reasons deeply rooted in the constitutional divisions of authority in our system of Government." *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 132 (1940). In this brief, California and Florida will show that, measured by the long established rules of this Court for determining the existence of a "justiciable controversy," the complaint of the State of Alabama falls short.

The real object of Alabama's complaint is to attack the constitutionality of an Act of Congress, namely, Public Law 31, enacted May 22, 1953, 67 Stat. 29. Alabama's other arguments appear to be "makeweights" advanced in an attempt to satisfy the Court's jurisdictional requirements and thereby bring this constitutional question before the Court. These other arguments will be considered in due course, but attention is first directed to the challenge to the validity of Public Law 31.

A. The Constitutionality of Public Law 31 Is Not Subject to Attack in This Suit by Alabama.

1. ALABAMA HAS NOT BEEN INJURED BY THE PASSAGE OF PUBLIC LAW 31.

Public Law 31 treats all forty-eight States, including Alabama, exactly alike. Section 3(a) of that Act declares that ownership and management of the "lands beneath navigable waters within the boundaries of the respective States" are confirmed and vested in said States. The Senate Interior and Insular Affairs Committee, which was principally responsible for drafting the provisions of the bill which was finally enacted,[1] emphasized this equality of treatment in its Report, as follows:

> "The joint resolution treats all of the States alike, both inland and coastal, with respect to lands beneath navigable waters within their respective boundaries." Report No. 133 to accompany S. J. Res. 13, 83d Cong. 1st Sess., p. 7.

With respect to the seaward boundary of coastal States, Public Law 31 treats Alabama as well as or better than other coastal States. Under Section 4 of the Act, the seaward boundary of each coastal State is either confirmed as being three geographical miles from her coast line, or the State is authorized to extend her boundary to that distance. Section 4 also provides that its provi-

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[1]The bill prepared and reported out by the Senate Committee (S. J. Res. 13) passed the Senate without substantial modification. 99 Cong. Rec. 4646. This bill, with only its designation changed to H. R. 4198, was then passed by the House and sent to the President. 99 Cong. Rec. 5065-5066.

sions shall not prejudice the "existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress." This provision, however, is qualified by Section 2(b), which states that "in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."[2]

The effect of these statutory provisions on Alabama can be summarized as follows: Like all other States, Alabama's ownership and management of all lands beneath navigable waters within her boundaries is confirmed and established. Alabama's seaward boundary is confirmed as being at least three miles from her coast line. If Alabama or any other Gulf State has a claim that her historic coastal boundary is farther than three miles seaward, the Act does not prejudice the claim. At the same time, the Act does not ratify or in any way determine the merits of any such claims beyond three miles. The net result is that Alabama has been benefited, and certainly not injured, by the passage of Public Law 31.[3]

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[2]It is apparent that this provision differentiates between States bordering on the Gulf and States bordering on the Atlantic or Pacific Oceans. Without going into the valid reasons for this differentiation, it is enough to point out that Alabama, as a State bordering on the Gulf, is in no position to complain of this provision.

[3]Since the actual result of Public Law 31 is to benefit Alabama, there is no substance to Alabama's vague suggestion (Br. p. 18) that Public Law 31 in effect "demeans" her sovereignty.

Yet Alabama argues, in the face of these clear statutory provisions, that Public Law 31 deprives her of important rights. Alabama recognizes that like other coastal States she has been granted ownership and management of the area three miles seaward from her coast line. But Alabama complains (Br. pp. 61-63) that her three-mile belt is not as valuable as those of other States and, in particular, that no oil has yet been discovered in Alabama waters. This circumstance, she contends, violates the "equal footing" clause.

That this argument misconceives the effect of the "equal footing" clause is shown by the following statement of this Court in *United States v. Texas*, 339 U. S. 707, 716 (1950):

> "The 'equal footing' clause has long been held to refer to political rights and to sovereignty. See *Stearns v. Minnesota*, 179 U. S. 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense . . . Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty."

This statement makes it clear that the clause does not guarantee that the property owned by Alabama shall be equal in "economic stature or standing" to that held by other States. Area, location, geology, or latitude may have created diversities between the value of the resources in Alabama's three-mile belt and those of other States, but the equal footing clause was not designed to, and could not, wipe out those diversities.

Nothing in the *Texas* case affords support for Alabama's argument that the "equal footing" clause is violated because the resources of her three-mile belt are less valuable than those of other States. There was no suggestion that if the coastal States are permitted to hold a portion of the offshore area, the area each State holds must have resources of equal character and value.

Alabama's argument that the value of her three-mile belt is "highly speculative" (Br. p. 63) points up the fallacy of her contention. The ultimate value of all the offshore areas is indeed highly speculative. Scientists and engineers are in agreement that these areas are only in their earliest stage of development.[4] Thirty years ago, California's three-mile belt may well have been worth less than the shrimp beds in Alabama's offshore waters. If, at present, Alabama regards her three-mile belt as less valuable than those of other States, this situation could at any time be reversed by the discovery of minerals or other valuable substances in Alabama's offshore waters.

In connection with her argument based on the equal footing clause, Alabama also objects to the return to California, Texas, and Louisiana under Section 3(b)(3) of the Act of rents and royalties which have been impounded or held in escrow since the decisions of this Court (Br. p. 7). This objection overlooks the nature of such funds. The impounded rents and royalties were derived from lands beneath navigable waters within the

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[4] Carson, *The Sea Around Us*, 188 *et seq.* (1951); Statement of Dr. Harold F. Clark, Professor in Charge of Educational Economics at Columbia University, Hearings before Senate Interior and Insular Affairs Committee on S. J. Res. 13 and other Bills, 83d Cong., 1st Sess., 354 *et seq.*; Rep. Nat. Petroleum Council, submerged Lands Capacity, 22 (May 28, 1953).

boundaries of the States. They accrued because both the United States and the States concerned recognized the vital importance of continued oil production and urged the holders of State-issued leases to maintain their operations pending the resolution of the offshore controversy.[8] If the oil on which the royalties were paid had remained in the ground, its ownership and control would have been vested and confirmed in the coastal States by Section 3(a) of Public Law 31. Thus it was appropriate and fair for Congress to turn the "escrow" funds derived from the areas within State boundaries over to the respective States. That Congress so viewed the nature of these funds is shown by the following reply of Senator Spessard Holland, a chief sponsor of the bill, to Senator Estes Kefauver:

> "The reason for my calling attention to it at this time is that all these stipulations show that the Senator was exactly right in the use of the word 'escrow' as applied to these funds, because the funds were neither the property of the United States nor of the State of California, but were, instead, put up in lieu of the oil which was taken from the ground, in order to be available to carry out any final decision which was made with respect to this controversy." 99 Cong. Rec. 4330. See also 99 Cong. Rec. 4628, 4629.

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[8]The Stipulation between the United States and the State of California, entered into on July 26, 1947, and thereafter revised and extended, was designed "to insure the production of oil and gas necessary to meet the critical need now existing" and it was to remain in effect until "pertinent legislation is enacted by the Congress." The Notice of the Secretary of the Interior dated Dec. 11, 1950, as thereafter revised and extended, stated that "undue interruption of the present operations in the Gulf of Mexico would involve the risk of injury to our national security and economy." 15 F. R. 8835.

Alabama also implies (Br. p. 63) that Public Law 31 infringes her rights by unconstitutionally authorizing Texas, Louisiana, and Florida to extend their boundaries nine nautical miles into the Gulf of Mexico. However, both the Act and its legislative history emphatically show that there is no warrant for such an argument.

Section 4 of the Act authorizes any coastal State which has not done so to extend her seaward boundary to a line three miles from her coast line. But neither Section 4 nor any other part of the Act authorizes a State to extend her boundary beyond three miles or grants new territory beyond that distance that was not within a State's historic legal boundary prior to the Act. If a Gulf State has a claim that her historic legal boundary is actually more than three miles seaward, the Act does not ratify or in any way determine the merits of that claim. Indeed, the debate in the Senate makes it clear that it was the firm purpose of Congress neither to prejudice nor to aid the proof of such claims. 99 Cong. Rec. 2716, 2717, 2728, 2797.[6] Consequently, there is no support for Alabama's repeated assertions that the claims of certain Gulf States to boundaries extending nine nauti-

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[6]Senator Guy Cordon, Floor Manager of the Bill, stated: "The States of the United States have legal boundaries . . . Whenever a question arises as to a boundary, it will be determined exactly as any other question in law is determined, and the boundary will be established. The pending measure does not seek to prejudice that issue, or to determine it." 99 Cong. Rec. 2716.

cal miles into the Gulf of Mexico are made "under color of Public Law 31."[7]

The sum of the matter is that the passage of Public Law 31 results in no injury to Alabama. This fact brings Alabama's complaint squarely within the well-settled principle that the Court "will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operations." Concurring opinion of Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 347-348 (1935); *Tyler v. Judges of the Court of Registration*, 179 U. S. 405, 410 (1900); see *Barrows v. Jackson*, 346 U. S. 249, 255 (1953).

The leading case in which the Court has refused to exercise the original jurisdiction on this ground is *Massachusetts v. Mellon*, 262 U. S. 447 (1923). There the constitutionality of the Maternity Act of November 23, 1921, was assailed on the ground that it invaded and usurped the rights and powers of Massachusetts as a sovereign State and of its citizens. Upon analyzing the statute, however, the Court found that no legal rights

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[7]Even if Public Law 31 had ratified claims to submerged lands more than three miles from the coast line (which it did not), there would be no basis for an exercise of the original jurisdiction. As pointed out at pages 19-24, *infra*, the validity of provisions granting offshore lands to the States is a political and not a justiciable question. Moreover, as we show at pages 25-28, *infra*, the area seaward of a State's legal boundary is an exclusively Federal area, and invalid assertions in that area could injure only the United States and not any individual State.

of the State were adversely affected by its operation. Therefore, the Court dismissed the action, holding:

> "No rights of the State falling within the scope of the judicial power have been brought within the actual or threatened operation of the statute, and this court is as much without authority to pass abstract opinions upon the constitutionality of acts of Congress as it was held to be, in *Cherokee Nation v. Georgia, supra,* of state statutes." 262 U. S. at 485.*

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*The authority of this case, which is relied on extensively throughout this brief, has not been questioned since it was rendered in 1923. On the contrary it has been followed or cited with approval more than twenty times by this Court. *Barrows v. Jackson,* 346 U. S. 249, 255 (1953); *Doremus v. Board of Education,* 342 U. S. 429, 433 (1952) (and see dissenting opinion at 435); *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U. S. 123, 151 (concurring opinion); *Oklahoma v. U. S. Civ. Serv. Comm.,* 330 U. S. 127, 139 (1947) principal case distinguished); *Gange Lumber Co. v. Rowley,* 326 U. S. 295, 305 (1945); *Georgia v. Pennsylvania R. Co.,* 324 U. S. 439, 445-446 (1945) (principal case distinguished); *Jones v. Bowles,* 322 U. S. 707, 708 (1944) (memorandum opinion); *Stark v. Wickard,* 321 U. S. 288, 304 (1944); *Communications Comm'n v. N.B.C.,* 319 U. S. 239, 266 (1943) (dissenting opinion); *Singer & Sons v. Union Pacific R. Co.,* 311 U. S. 295, 303 (1940); *Perkins v. Lukens Steel Co.,* 310 U. S. 113, 125 (1940); *Coleman v. Miller,* 307 U. S. 433, 440 (1939) (principal case distinguished); *Tennessee Power Co. v. T.V.A.,* 306 U. S. 118, 137 (1939); *Ex parte Albert Lévitt,* 302 U. S. 633, 634 (1937); *Alabama Power Co. v. Ickes,* 302 U. S. 464, 478 (1938); *Aetna Life Ins. Co. v. Haworth,* 300 U. S. 227, 241 (1937); *Ashwander v. T.V.A.,* 297 U. S. 288, 348 (1936) (Brandeis, J., concurring); *United States v. Butler,* 297 U. S. 1, 57, 73 (1936) (principal case distinguished); *Hopkins Federal Sav. & Loan Assn. v. Cleary,* 296 U. S. 315, 341 (1935) (principal case distinguished); *A. Magnano Co. v. Hamilton,* 292 U. S. 40, 43 (1934); *Nashville, C. & St. L. R. Co. v. Wallace,* 288 U. S. 249, 261 (1933) (principal case distinguished); *Champlin Rfg. Co. v. Commission,* 286 U. S. 210, 238 (1932); *Western Pacific Cal. R. Co. v. Southern Pac. Co.,* 284 U. S. 47, 51 (1931); *Columbus & Greenville Ry. v. Miller,* 283 U. S. 96, 100 (1931); *Williams v. Riley,* 280 U. S. 78, 80 (1929); *Willing v. Chicago Auditorium,* 277 U. S. 274, 289 (1928) (principal case distinguished); *Liberty Warehouse Co. v. Grannis,* 273 U. S. 70, 74 (1927); *Florida v. Mellon,* 273 U. S. 12, 18 (1927); *N. J. v. Sargent,* 269 U. S. 328, 334 (1926).

The same rule applies in the converse factual situation presented by Alabama's complaint. Alabama challenges the constitutionality of Public Law 31 on the ground that it vests in the respective States certain rights and powers which Alabama says should properly be reserved to the Federal Government. But the legal rights of Alabama are not injured by the operation of the statute. As a result, this Court is as much without authority to pass an abstract opinion as it was in *Massachusetts v. Mellon.*

New Jersey v. Sargent, 269 U. S. 328 (1926), is equally pertinent. There an action by New Jersey seeking to question the constitutionality of the Federal Water Power Act of June 10, 1920, was dismissed because of the failure of the State to show that it had suffered any injury. The Court said:

> "On reading the present bill we are brought to the conclusion, first, that its real purpose is to obtain a judicial declaration that, in making certain parts of the Federal Water Power Act applicable to waters within and bordering on the State of New Jersey, Congress exceeded its own authority and encroached on that of the State, and secondly, that the bill does not show that any right of the State, which in itself is an appropriate subject of judicial cognizance, is being, or about to be, affected prejudicially by the application or enforcement of the Act." 269 U. S. at 334.

Likewise in *Texas v. Interstate Commerce Commission,* 258 U. S. 158, 162 (1922), the Court refused to pass on "an abstract question of legislative power" where there had been no showing that the complainant's rights "are being, or about to be, affected prejudicially by the application or enforcement" of the statute involved. This prin-

ciple was also applied in *United States v. West Virginia*, 295 U. S. 463, 473-474 (1935). and *New York v. Illinois*, 274 U. S. 488, 490 (1927).*

Applied to the Alabama complaint, these cases indicate that this Court should refuse to take jurisdiction of the State's attack on Public Law 31. Since the legal interests of Alabama are not injured but in fact are benefited by the operation of the statute, the request of Alabama for a declaration as to the constitutionality of the Act should be denied. To render such a declaration would be to pass on an abstract question of legislative power.

2. ALABAMA DOES NOT HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF PUBLIC LAW 31 ON BEHALF OF HER CITIZENS.

The argument in the preceding section showing that Alabama has not been injured by the passage of Public Law 31 of course applies equally to citizens of Alabama. However, even if it be assumed for the purpose of argument that Alabama citizens have been injured by the Act, the State of Alabama does not have standing to represent her citizens in attacking the constitutionality of the Act. This fact is conclusively established by prior decisions of this Court.

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*Alabama appears to recognize this principle, for, in attempting to distinguish *Massachusetts v. Mellon*, Alabama says (Br. p. 36) that this Court refused to permit Massachusetts to sue because the interests asserted "were not in fact threatened with invasion." In that connection, Alabama says that "under the Maternity Act, Massachusetts was offered the same chance to obtain the benefits of the Act for its citizens as were the other forty-seven states." (Br. p. 35.) The same thing is true here, for, as we have shown, Alabama like the other forty-seven States has been granted ownership of all lands beneath navigable waters within her boundaries. Moreover, the provisions of the Act regarding her seaward boundary are at least as favorable as those relating to other States.

In *Massachusetts v. Mellon, supra,* the State sought to assail the constitutionality of the Maternity Act as a "representative of its citizens." 262 U. S. at 485. This Court held that a State did not have standing as *parens patriae* to challenge the validity of that Federal statute, saying:

> ". . . While the State, under some circumstances, may sue in that capacity for the protection of its citizens (*Missouri v. Illinois,* 180 U. S. 208, 241), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae,* when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." 262 U. S. at 485-486.[10]

This principle was applied and reiterated less than four years later in *Florida v. Mellon,* 273 U. S. 12 (1927). There this Court refused to permit the State of Florida to challenge as a representative of her citizens the constitutionality of the Federal inheritance tax law. The Court said:

> "Nor can the suit be maintained by the state because of any injury to its citizens. They are also citizens of the United States and subject to its laws. In respect of their relations with the federal government it is the United States, and not the State, which represents them as *parens patriae,* when such representation becomes appropriate; and to the former, and not to the latter, they must look for such

[10]See footnote 8, *supra.*

protective measures as flow from that status.' *Massachusetts v. Mellon, supra,* pp. 485-486." 273 U. S. at 18.

The continuing vitality of this principle is clearly demonstrated by *Georgia v. Pennsylvania R. Co.,* 324 U. S. 439 (1945), which has been much relied upon by Alabama. In setting forth the categories of cases not within its original jurisdiction, the Court said:

". . . . Moreover, *Massachusetts v. Mellon* and *Florida v. Mellon, supra,* make plain that the United States, not the State, represents the citizens as *parens patriae* in their relations to the federal government." 324 U. S. at 446.

The Court then distinguished the case before it by saying:

"The present controversy, however, does not fall within any of those categories. This is a civil, not a criminal proceeding. Nor is this a situation where the United States rather than Georgia stands as *parens patriae* to the citizens of Georgia. This is not a suit like those in *Massachusetts v. Mellon,* and *Florida v. Mellon, supra,* where a State sought to protect her citizens from the operation of federal statutes. Here Georgia asserts rights based on the anti-trust laws." 324 U. S. at 446-447.

The suit by Alabama on behalf of her citizens falls squarely within the principle enunciated by these cases. In contrast to *Georgia v. Pennsylvania R. Co.,* where a State in effect sued under and by virtue of a Federal statute, Alabama's attack on Public Law 31 makes this suit one in which, as in *Massachusetts v. Mellon* and *Florida v. Mellon, supra,* a State seeks to protect her citizens from the operation of a Federal statute. As

those cases indicate, this is a situation involving the relations of citizens of Alabama to the Federal Government where the United States rather than Alabama stands as *parens patriae*. In this situation, the citizens of Alabama must look to the United States and not to the State for protective measures.

Alabama's attempt to escape the application of this principle is not persuasive. The attempted distinction (Br. pp. 34-37) of *Massachusetts v. Mellon* relates largely to Massachusetts' suit in her own behalf as a sovereign State and does not detract from the holding that with regard to relations with the Federal Government, the United States and not the State represents the citizens as *parens patriae*.[11] The reliance on *Georgia v. Pennsylvania R. Co.* is misplaced because, as the Court said, Georgia sought to protect its citizens from a price fixing conspiracy by asserting rights "based on federal laws" (324 U. S. at 447), whereas Alabama, on the other hand, seeks to invalidate a Federal statute.

Nor is *Missouri v. Holland*, 252 U. S. 416 (1920), properly cited in support of Alabama's position. That case arose from the enforcement in Missouri of a Federal statute regulating the taking of wild game. In the opinion of the Court by Mr. Justice Holmes, less than a sentence is devoted to the jurisdictional holding that "it is

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[11] Alabama's first reference (Br. p. 34) to *Massachusetts v. Mellon* suggests that she regards it necessary to consider that case in connection with her interests as quasi sovereign and *parens patriae*. However, the subsequent argument is to the effect that "Alabama asserts a real sovereign interest," not an "abstract question of the respective spheres of political power." (Br. pp. 36-37.) The fallacy of this argument was shown in the preceding section of this brief (pp. 5-14), but even if valid, the argument certainly would not show that Alabama can represent her citizens in assailing a Federal statute.

enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a State." 252 U. S. at 431. Examination of the three cases cited in support of this terse statement shows that in each of them, as in *Missouri v. Holland*, natural resources *within* the complaining State were directly affected.[12] Therefore, neither *Missouri v. Holland*, nor any of the cases cited therein, is authority for the proposition that a State has standing as quasi sovereign to question an act of Congress respecting Federal lands and resources lying *outside* that State. Indeed, the subsequent unanimous opinion in *Massachusetts v. Mellon* expressly distinguished *Missouri v. Holland* on the ground that it involved "the quasi sovereign right of the state to regulate the taking of wild game *within its borders.*" 262 U. S. at 482. (Emphasis added.)

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[12]Thus, *Kansas v. Colorado*, 185 U. S. 125 (1902), involved water rights in an interstate stream which passed through both States. In *Georgia v. Tennessee Copper Company*, 206 U. S. 230 (1907), pollution of the air over the complaining State was enjoined. In *Marshall Dental Manufacturing Company v. Iowa*, 226 U. S. 460 (1913), a State, even without proof of her own title, was allowed to question a private party's claim to the bed of a navigable lake within the State. Perhaps the best expression of the applicable rule was given by Mr. Justice Holmes (for this Court) in *Hudson Water Company v. McCarter*, 209 U. S. 349, 355 (1908), where he said: "But it is recognized that the State as *quasi*-sovereign and representative of the interests of the public has a standing in court to protect the asmosphere, the water and the forests *within its territory*, irrespective of the assent or dissent of the private owners of the land most immediately concerned." (Emphasis added.) Significantly *Kansas v. Colorado* and *Georgia v. Tennessee Copper Company* are the only cases which are cited in support of this proposition. Moreover, in *Marshall Dental Manufacturing Company v. Iowa*, which was the third case cited in *Missouri v. Holland*, the *Hudson Water Company* case was relied upon. That this limited rule is the one which is applicable to *Missouri v. Holland* is made even more clear by the direct statement in the *Hudson Water Company* case that "this principle" underlies the right of a State to make laws for the preservation of game. 209 U. S. at 356.

Alabama also places reliance (Br. pp. 39-40) upon *Hopkins Savings Assn. v. Cleary*, 296 U. S. 315 (1935). However, the Court expressly recognized the validity of the *Massachusetts* case and based its decision authorizing Wisconsin to sue on the special relationship between the State and the corporations created by it. The Court said:

> ". . . The ruling [in *Massachusetts v. Mellon*] was that it was no part of the duty or power of a state to enforce the rights of its citizens in respect of their relations to the Federal Government. *Cf. Florida v. Mellon*, 273 U. S. 12. Here, on the contrary, the state becomes a suitor to protect the interests of its citizens against the unlawful acts of corporations created by the state itself." 296 U. S. at 341.

The fact that such cases as *Missouri v. Holland* and *Hopkins Savings Assn. v. Cleary* do not qualify *Massachusetts v. Mellon* is shown by this Court's emphatic restatement in *Georgia v. Pennsylvania R. Co.* of the principle that the United States, not a State, represents citizens in their relations to the Federal Government. 324 U. S. at 446.

3. The Validity of Public Law 31 Is a Political and Not a Justiciable Question.

Article IV, Section 3, Clause 2 of the Constitution vests in Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." This Court has explicitly held that Congress, in exercising its powers over Government property, is not subject to judicial interference. *Federal Power Commission v. Idaho Power Co.*, 344 U. S. 17, 21 (1952); *United States v.*

San Francisco, 310 U. S. 16, 29-30 (1940). In the *San Francisco* case, the Court said:

> ". . . The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' Thus, Congress may constitutionally limit the disposition of the public domain to a manner consistent with its views of public policy." 310 U. S. at 29-30.

The broad power of Congress to grant property to States is illustrated by the action of this Court in connection with *United States v. Wyoming*, 331 U. S. 440 (1947). That case involved a suit by the United States against Wyoming and its lessee, Ohio Oil Company, in which the Federal Government claimed ownership of land which Wyoming had leased in the belief that it was State school land. The unanimous decision of the Court in 1947 upheld the contentions of the United States but retained jurisdiction for the purpose of determining the amount of damages due from the defendants.

Thereafter Congress passed Public Law 887 of July 2, 1948, which directed the Secretary of the Interior to issue to the State a patent, antedated to July 10, 1890, covering the oil-producing portion of the property. Shortly thereafter, this Court ruled that there was no further need to consider the United States' claim for damages, thus giving full recognition to the plenary power of Congress to grant this Federal property to Wyoming. 335 U. S. 895-896 (1948). Implicit in the Court's ruling was the principle that Congressional action in disposing of Federal property is not open to judicial inquiry.

It is true, of course, that the offshore lands involved here have a special status. In 1947, the Solicitor of the Interior Department ruled, with the concurrence of the Attorney General, that although the Federal Government has paramount rights in the offshore submerged lands under the decision in the *California* case, such lands do not fall into the category of "public lands."[13] Moreover, this Court emphasized in the *California* case that actions taken in the offshore waters involve foreign relations.[14] 332 U. S. at 35.

However, the special status of these offshore lands only serves to emphasize that the rule against judicial interference is especially applicable to the actions of Congress and the President in this case. It is a well-settled principle that the actions of our political agencies in the field of foreign affairs are not subject to review in this Court. *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 319-321 (1936); *Ex parte Peru*, 318 U. S. 578 (1943). In *C. & S. Air Lines v. Waterman Corp.*, 333 U. S. 103 (1948), the Court said that decisions in the field of foreign policy

> ". . . are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which

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[13]See Solicitor's opinion, dated August 8, 1947, in which the Attorney General concurred by letter to the Secretary of the Interior, dated August 29, 1947. Reprinted, Senate Hearings on S-1901, 83d Cong., 1st Sess., 579-581.

[14]Section 6 of the Act specifically provides that the Federal Government retains the rights in, and powers of regulation and control over, the lands and waters involved here for constitutional purposes relating to international affairs.

> the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." 333 U. S. at 111.

In view of the general rules as to the disposal of Government property and having in mind the special status of the property here involved, it seems clear that the action of the political agencies in vesting ownership and management of the lands involved here in the respective States is not open to review. In addition to the above cited precedents, this Court's decision in the *California* case also provides strong support for this view. In that case, the Court, after noting the general rule that the power of Congress to dispose of Federal property is "without limitation," said with reference to the offshore lands: "Thus neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power." 332 U. S. at 27. Alabama's insistence (Br. pp. 47-48) that this statement be limited to a context relating to the power of the Attorney General to commence actions on behalf of the United States cannot overcome this Court's emphatic statement that the offshore lands are a "congressional area of national power."

In stating the question before it in the *California* case this Court gave full recognition to the fact that development of the marginal belt would have to be delegated to some agency. The Court said, "our question is whether the state or the Federal Government has the paramount right and power to determine *in the first instance* when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited." 332 U. S. at 29. Moreover, the Court also speaks of a "congres-

sional surrender of title or interest" in a manner that indicates that the authority for such action is unquestioned. 332 U. S. at 39.

The conclusiveness of the actions of the political agencies in the offshore waters is also shown by the Court's reference to this nation's establishment of a three-mile marginal belt. The Court said:

> ". . . That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, 122-124. And this assertion of national dominion over the three-mile belt is binding upon this Court." 332 U. S. at 33-34.

In the present case, the action of the political agencies in enacting Public Law 31 is equally binding upon this Court.[18]

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[18]The cases cited by Alabama (Br. pp. 50-51) in an attempt to establish that the action of Congress is subject to review are not in point. In *Butte City Water Company v. Baker*, 196 U. S. 119 (1905), the Court not only upheld the action of Congress in delegating certain matters to State control but also emphasized that "Congress is the body to which is given the power to determine the conditions upon which the public lands shall be disposed of." 196 U. S. at 126. *Mormon Church v. United States*, 136 U. S. 1 (1890), which upheld the power of Congress to repeal an act of a territorial legislature incorporating a church, suggests no limitation upon the power of Congress to dispose of Federal property. The dictum cited from *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 338 (1936), appears to be more a description of the responsibility of Congress than the statement of a judicial test, but, in any event, it is clear that the grants made in Public Law 31 are not for a "private or personal end."

In connection with these cases, it should be noted that it is not necessary for defendants to show that the action of Congress in disposing of Federal property is never under any circumstances subject to judicial review. It is enough to show, as California and Florida have, that under existing circumstances the action of Congress in granting to the States property having the special status of the offshore lands is not open to challenge.

Alabama's approving reference (Br. p. 56) to the swamp land grants provides an illustration of this broad and binding power of Congress in disposing of Federal property. Only fifteen States have received swamp land grants, and Alabama is one of them, having received nearly a half million acres.[16] Thus, not only do such grants fail to give each State resources equal in character and value, but the majority of States have received nothing at all. Yet these grants are of unquestioned validity.[17] They provide firm precedents for the action of Congress in passing Public Law 31, which vests in all the States ownership and management of the lands beneath navigable waters within their boundaries.

B. The Alleged Actions of Texas, Louisiana, and Florida Afford No Basis for an Exercise of This Court's Original Jurisdiction.

In the preceding sections it has been demonstrated that Alabama's complaint fails to state a justiciable case or controversy with respect to Public Law 31. In that connection we have shown (p. 10, *supra*) that there is no basis for Alabama's statements that the boundary claims of Texas, Louisiana, and Florida in the area between three and nine nautical miles off shore have been made "under color of Public Law 31." In this section we will first consider the boundary claims being made by Texas, Louisiana, and Florida, independently of Public Law 31. Thereafter we will consider the actions which those three States are alleged to be taking and threatening in the offshore waters against Alabama citizens.

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[16]1952 Report of the Director of the Bureau of Land Management, Department of the Interior, p. 136.

[17]See annotation in 43 U. S. C. A., §§981-982.

1. ALABAMA HAS NO STANDING TO CHALLENGE THE ALLEGED BOUNDARY CLAIMS OF TEXAS, LOUISIANA, AND FLORIDA.

The submerged offshore lands outside historic State boundaries constitute an exclusively Federal area. This is established by Public Law 212, 83d Cong., 1st Sess., 67 Stat. 462 (Outer Continental Shelf Lands Act). This Act provides in Section 4(a) that the Constitution and Federal laws are to apply to the subsoil and sea-bed outside State boundaries[18] to the same extent as if it "were an area of exclusive Federal jurisdiction." Under the Act the leasing and administration of this offshore area are delegated to the Secretary of the Interior (Sections 5 and 8), and all the revenues therefrom go into the Federal treasury (Section 9).

Even before the passage of Public Law 212, it was clear that the submerged land outside State jurisdiction was a Federal area. Presidential Proclamation No. 2667, dated September 28, 1945, 59 Stat. 884, declared that the natural resources of the subsoil and sea-bed of the Continental Shelf appertain to the United States, and Executive Order 9633 issued the same day placed the resources of that area under the jurisdiction of the Secretary of the Interior. 10 F. R. 12305. This assertion of jurisdiction contained in the Proclamation was confirmed by Section 9 of Public Law 31. Furthermore, Presidential Proclamation No. 2668, also issued September 28, 1945,

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[18]By Section 3 of the Act the subsoil and sea-bed of the Continental Shelf lying seaward of "lands beneath navigable waters" (as that term is used in Public Law 31) are declared to appertain to the United States. The phrase "lands beneath navigable waters" is defined in Section 2 of Public Law 31 to include the area in coastal States within three geographical miles of the coast line, or within the State's historic seaward boundary if a State has an historic boundary farther than three miles from the coast line.

asserted the intention of the United States to establish conservation zones in the off-shore waters. 59 Stat. 885.

Thus it is evident that if Texas, Louisiana, and Florida have made invalid territorial assertions in the off-shore waters, they are invading Federal rights, not the rights of the State of Alabama. The territorial assertions, if they are improper, are claims to submerged lands under the jurisdiction and control of the United States, not of Alabama. The State of Alabama is no more directly injured by these territorial claims than she would be if the State of Virginia asserted a claim to a portion of the District of Columbia.[19]

The absence of any special injury to Alabama brings her complaint concerning territorial assertions by the defendants squarely within the principle of the cases cited in the first section of this brief, pp. 11 *et seq.*, *supra*. Those cases establish that this Court will refuse to exercise the original jurisdiction in the absence of a showing that there is an actual or imminently threatened invasion of the rights of the complainant State. As the Court said in *Massachusetts v. Missouri*, 308 U. S. 1, 15 (1939), to constitute a justiciable controversy, "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence." See also *Arizona v. California*, 283 U. S. 423, 462 (1931). It is apparent that the

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[19]There was at one time a protracted dispute between Virginia and the District of Columbia concerning their mutual boundary in the vicinity of the Potomac River. See *Smoot Sand & Gravel Corp. v. Washington Airport*, 283 U. S. 348 (1931); *Marine Ry. & Coal Co. v. United States*, 257 U. S. 47 (1921). It could hardly be contended that Alabama was injured by Virginia's claims.

State of Alabama has suffered no special wrong at the hands of the defendants; nor is she suing to vindicate a right held by her as a State.

Properly considered, defendants' alleged encroachment upon the Federal offshore area is of no more concern to Alabama than it is to the other States and to the public at large. It is well settled that this Court will not entertain cases where, as here, the complainant's injury is only that suffered in common with people generally. *Frothingham v. Mellon*, 262 U. S. 447, 487-488 (1923); see *Stark v. Wickard*, 321 U. S. 288, 304 (1944). In *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 132 (1940), this Court spoke of the "impropriety of judicial interpretations of law at the instance of those who show no more than a mere possible injury to the public."

The decisions cited by Alabama (Br. pp. 22-23) as showing her standing to sue are not in point, for the wrongful actions alleged in those cases had a territorial or otherwise special impact upon the complainant States. Thus each of the eight cases cited by Alabama to show that "this Court has allowed states to present disputes concerning their boundaries" (Br. p. 23) involved the boundary of the complainant State, not some other State. In the cases cited involving the diversion of flow from an interstate stream, the wrong alleged had the effect of reducing the water available *within the complainant State*. Likewise, the case involving the overflow of waters from Minnesota into North Dakota involved a direct impact in the nature of a trespass upon the complainant State.[20]

[20]In attempting to establish her claim of injury Alabama alleges that the boundary laws of Texas, Louisiana, and Florida "demean" her sovereignty. (Br. p. 18.) However, as we have shown, the area seaward of historic State boundaries is a Federal area, and invalid claims in that area invade Federal rights, not those of Alabama.

Indeed, we have found no case where a State has been permitted to sue in its sovereign capacity where there was no territorial or other special impact upon the complainant State. Cases involving such an impact, like those cited by Alabama, are clearly not authority for Alabama to challenge the alleged territorial claims of defendant States which do not affect Alabama's boundaries or have any special impact upon Alabama's sovereign interests.

2. THIS COURT SHOULD NOT ENTERTAIN ALABAMA'S REQUEST FOR AN INJUNCTION RESTRAINING TEXAS, LOUISIANA, AND FLORIDA FROM APPLYING THEIR STATUTES TO ALABAMA CITIZENS.

Alabama complains that Texas, Louisiana, and Florida are: (1) threatening Alabama citizens with discriminatory license fees and excise taxes and with the complete denial of the privilege of fishing in the offshore waters, and (2) requiring Alabama citizens, under pain and risk of severe penalties, to pay license fees and excise taxes for fishing in the Gulf of Mexico between three and nine nautical miles from the coast line of the respective States. Br. p. 30. Alabama, in her capacity as quasi sovereign and *parens patriae* for her citizens, seeks to enjoin the application of Texas, Louisiana, and Florida statutes in the offshore waters. However, it is clear that these allegations of the complaint do not warrant the exercise of the Court's original jurisdiction.

(a) ***The Request for an Injunction is Premature and Unwarranted.*** This Court has frequently emphasized that, in a suit between States, "Before this Court ought to intervene the case should be of serious magnitude, clearly and fully proved . . . ." *Missouri v. Illinois*, 200 U. S. 496, 521 (1906); *New York v. New Jersey*, 256 U. S. 296, 309 (1921); *North Dakota v. Minnesota*, 263 U. S.

365, 374 (1923); *Connecticut v. Massachusetts,* 282 U. S. 660, 669 (1931). "A state asking leave to sue another to prevent the enforcement of laws must allege, in the Complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor." *Alabama v. Arizona,* 291 U. S. 286, 291 (1934). In another context the Court has emphasized that "Caution is appropriate against the subtle tendency to decide public issues free from the safeguards of critical scrutiny of the facts, through use of a declaratory summary judgment." *Eccles v. Peoples Bank,* 333 U. S. 426, 434 (1948).

Viewed in the light of these considerations, it is evident that Alabama is unwarranted or at least premature in bringing this complaint on behalf of its citizens against Texas, Louisiana, and Florida. First, with respect to the discriminatory fees and taxes and the denial of the privilege of fishing in the three-mile belt, the complaint concedes that there is only a threat of such action. (Complaint, paragraphs XXIV, XXVII, and XXX.) That such threatened injury is insufficient is shown by the following statement of the Court in *Nebraska v. Wyoming,* 325 U. S. 589, 608 (1945):

> ". . . The argument is that the case is not of such serious magnitude and the damage is not so fully and clearly proved as to warrant the intervention of this Court under our established practice. *Missouri v. Illinois,* 200 U. S. 496, 521; *Colorado v. Kansas,* 320 U. S. 383, 393-394. The argument is that the potential threat of injury, representing as it does only a possibility for the indefinite future, is no basis for a decree in an interstate suit since we cannot issue declaratory decrees. *Arizona v. California,* 283 U. S. 423, 462-464, and cases cited.
>
> "We fully recognize those principles."

Second, with respect to the assertions that the three States are now requiring Alabama citizens to pay taxes and excises in the offshore area between three and nine miles seaward from the coast line, there is only Alabama's bare allegation, unsupported by instances or details. (Complaint, paragraphs XXIV, XXVII, and XXX.) There is no showing that Texas, Louisiana, or Florida have enforced any statutes or penalties in that area against and over the protest of Alabama citizens. In the absence of such a showing, there is no justiciable controversy between the States, as this Court indicated in *Alabama v. Arizona*, 291 U. S. 286 (1934).[21] In that case this Court denied Alabama leave to file a complaint seeking to enjoin five other States from enforcing their statutes against open market sales of products made by prison labor. In the course of the opinion holding that there was no "direct issue" between Alabama and the defendants, the Court said:

> "In the absence of specific showing to the contrary, it will be presumed that no State will attempt to enforce an unconstitutional enactment to the detriment of another." 291 U. S. at 292.

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[21] Alabama's reliance upon *Pennsylvania v. West Virginia*, 262 U. S. 553 (1923), is misplaced, for in at least two major respects that case differs significantly from the one now presented. First, under the West Virginia statute involved in the *Pennsylvania* case, the plaintiff States and their citizens were faced with a general and immediate fuel crisis, together with the loss of hundreds of millions of dollars in pipelines and other equipment. In contrast, Alabama's only claim of present injury is an alleged financial burden upon Alabama's fishing industry—a claim totally lacking in particularity. Second, discrimination was at the heart of the *Pennsylvania* case. The West Verginia statute was designed to give an absolute preference to West Virginia users of natural gas, and it was that discrimination which the Court declared unconstitutional. Here, however, Alabama suggests only that her citizens are "threatened" with discriminatory treatment by Texas, Louisiana, and Florida; the fees and taxes alleged to be presently in effect are not claimed to be discriminatory.

(b) *Alabama citizens have an adequate remedy in a lower court.* If Alabama citizens desire to challenge the enforcement of Texas, Louisiana, or Florida statutes in the waters offshore from those States, such an action can be conveniently and effectively brought in the Federal District Court of any of the States involved. The availability of such relief is demonstrated by the strikingly parallel case of *Toomer v. Witsell*, 334 U. S. 385 (1948). There, fishermen who were Georgia citizens sued South Carolina officials in a South Carolina Federal District Court to challenge the validity of South Carolina statutes which imposed a tax of one-eighth cent a pound on green shrimp taken in the marginal belt, required non-residents to pay a $2,500 fee for each shrimp boat and residents to pay a fee of only $25, and provided that shrimp boats fishing in the marginal belt must dock and unload at a South Carolina port.[22]

The three-judge Federal District Court upheld the statutes, and a direct appeal was taken to this Court. This Court, after stating that it was agreed that *South Carolina officials were attempting to enforce the statutes* against the Georgia fishermen, upheld the right of the fishermen to bring the action, saying:

> ". . . It is also clear that compliance with any but the income tax statute would have required payment of large sums of money for which South Carolina provides no means of recovery, that defiance would have carried with it the risk of heavy fines

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[22]The Georgia fishermen also sought to challenge the validity of a South Carolina statute imposing upon non-residents an income tax on profits from operations in the State. However, since the Georgia fishermen could pay this tax under protest and then sue in a State court to recover the amounts so paid, this Court held that there was an adequate remedy at law. 334 U. S. at 392.

and long imprisonment, and that withdrawal from further fishing until a test case had been taken through the South Carolina courts and perhaps to this Court would have resulted in a substantial loss of business for which no compensation could be obtained. Except as to the income tax statute, we conclude that appellants sufficiently showed the imminence of irreparable injury for which there was no plain, adequate and complete remedy at law." 334 U. S. at 391-392.

On the merits, the Court sustained the validity of the one-eighth cent a pound tax[23] but held that the discriminatory license fee violated the privileges and immunities clause of the Constitution, and that the requirement of docking and unloading at a South Carolina port constituted an invalid burden on interstate commerce.

The precedent of *Toomer v. Witsell* makes it certain that Alabama citizens can challenge in local Federal courts any attempt by Texas, Louisiana, and Florida to enforce invalid statutes against them in the offshore waters. This Court has frequently indicated that the presence of such an adequate alternative remedy in a lower court is a sound ground for refusing to exercise the original jurisdiction. In *Massachusetts v. Missouri*, 308 U. S. 1 (1939), the Court declined to take jurisdiction of Massachusetts' suit against Missouri citizens because "In this instance it does not appear that Massachusetts is without a proper

[23]The Court construed this tax to apply only to shrimp caught within the three-mile belt, but it left little doubt that Federal courts would consider, at the instance of citizens of other States, the validity of State statutes affecting the area outside the three-mile belt when a "concrete factual situation" is presented. 334 U. S. at 394.

and adequate remedy." 308 U. S. at 19.[24] In *Alabama v. Arizona, supra,* 291 U. S. 286 (1934), the Court based its denial of leave to file a complaint in part on the fact that the complaint "fails to show that . . . . Alabama's assertion of right may not, or indeed will not, speedily and conveniently be tested by the contracting company that apparently is directly concerned, or by a seller of such goods." 291 U. S. at 292. In *Georgia v. Pennsylvania R. Co., supra,* 324 U. S. 439 (1945), although there was disagreement whether another suitable forum was available, it was common ground between the Court and the four dissenting Justices that it is appropriate for the Court to withhold the exercise of its jurisdiction "where there has been no want of another suitable forum to which the cause may be remitted in the interests of convenience, efficiency, and justice." 324 U. S. at 464-465.

In view of the fact that Alabama citizens have another suitable forum in which to challenge the statutes of Texas, Louisiana, and Florida, it appears that this Court should decline to exercise its original jurisdiction for that purpose. In that way this Court will be spared "the duty of making an independent examination of the evidence, a time-consuming process which seriously interferes with the discharge of our ever increasing appellate duties." Chief Justice Stone dissenting in *Georgia v. Pennsylvania R. Co., supra,* 324 U. S. at 470.

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[24]The Court noted, "With respect to the character of the claim now urged, we are not advised that Missouri would close its courts to a civil action brought by Massachusetts to recover the tax alleged to be due from the trustees." 308 U. S. at 20.

II

The United States Is An Indispensable Party and Has Not Consented to Be Sued.

The complaint asserts that the United States has paramount rights in and exclusive jurisdiction and control over the lands, minerals, and other natural resources lying seaward of the coast line of the defendant States. (Paragraphs IX, X, XIII, and XVI.) The prayer asks that Public Law 31 be declared to give defendant States no rights in "any lands, natural resources or marine animal or plant life which was, prior to the enactment of such law, vested by the Constitution in the United States to be exercised for the benefit of all the states and citizens of the United States." (Paragraph 2.) In her brief, Alabama asserts (p. 32) that the State and her citizens have an "equitable interest in the vast sums to be derived from the continued and ever-increasing development of the natural resources" described in the complaint. Alabama suggests that her share, at least of the impounded funds, is something between two and two and one-half per cent. (Br. p. 32.)

These allegations and assertions make it clear that the United States is at the center of this proceeding. The property involved, says Alabama, is under the jurisdiction and control of the United States. According to Alabama, the considered attempt of the Congress and the President to vest this property in the respective States is void, and the property remains in the United States. Alabama asserts an equitable interest in her equal share of the assets which have been and will be produced from the property.

Under those circumstances the United States is an indispensable party. *Arizona v. California*, 298 U. S. 558 (1936), is squarely in point to this effect. In that case, Arizona sought leave to file an original action asking for a judicial apportionment of all the unappropriated waters of the Colorado River. By the Boulder Canyon Project Act, the United States, as an exercise of its power to regulate navigation, had previously undertaken to impound, control, and in some instances dispose of the surplus water in the stream not already appropriated. The Court denied Arizona leave to file on the ground that the United States was an indispensable party. The language of the Court, in a unanimous opinion by Mr. Justice Stone, is directly applicable to Alabama's complaint.

". . . The prayer is for a decree of equitable division of the privilege of future appropriation. The relief asked, and that which upon the facts alleged would alone be of benefit to Arizona, is a decree adjudicating to petitioners the 'unclouded . . . rights to the permanent use of' the water. *Such a decree could not be framed without the adjudication of the superior rights asserted by the United States.* The 'equitable share' of Arizona in the unappropriated water impounded above Boulder Dam could not be determined without ascertaining the rights of the United States to dispose of that water in aid and support of its project to control navigation, and without challenging the dispositions already agreed to by the Secretary's contracts with the California corporations, and the provision as well of §5 of the Boulder Canyon Project Act that no person shall be entitled to the stored water except by contract with the Secretary.

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"Every right which Arizona asserts is so subordinate to and dependent upon the rights and the exercise of an authority asserted by the United States that no final determination of the one can be made without a determination of the extent of the other. Although no decree rendered in its absence can bind or affect the United States, that fact is not an inducement for this Court to decide the rights of the states which are before it by a decree which, because of the absence of the United States, could have no finality. * * * A bill of complaint will not be entertained which, if filed, could only be dismissed because of the absence of the United States as a party." (Emphasis added.) 298 U. S. at 570-572.

It is apparent here, as it was in *Arizona v. California*, that a "decree could not be framed without an adjudication of the superior rights" which are said to be held by the United States. In terms of the Court's language in the *Arizona* case, every right which Alabama asserts "is so subordinate to and dependent upon the rights and the exercise of an authority" assertedly held "by the United States that no final determination of the one can be made without a determination of the extent of the other." 298 U. S. at 571.

On the one hand, to uphold Alabama's claim would require much more than a mere restoration of the property to the Federal Government. Indeed, the assets would have to be impressed with a trust in Alabama's favor, and the United States would have to be deprived of its power of alienation with respect to this property. These claims bring Alabama squarely in conflict with the United States. On the other hand, to hold that the property is vested in the defendant States would amount to a denial of the

rights which Alabama claims are held by the United States.[25]

The decision in *Arizona v. California* is in accord with a long line of decisions holding that the United States is an indispensable party in cases in which its property will be affected. In *Minnesota v. United States*, 305 U. S. 382 (1939), the State brought a condemnation action to acquire a right of way over lands which the United States owned in fee and held in trust for Indian allottees. In a unanimous opinion by Mr. Justice Brandeis, the Court held:

> "The United States is an indispensable party defendant to the condemnation proceedings. A proceeding against property in which the United States has an interest is a suit against the United States . . . It is confessedly the owner of the fee of the Indian allotted lands and holds the same in trust for the allottees. As the United States owns the fee of these parcels, the right of way cannot be condemned without making it a party." 305 U. S. at 386.

Likewise, in *Louisiana v. Garfield*, 211 U. S. 70 (1908), the Court held that the United States is an indispensable party in an action brought by the State against the Secretary of the Interior to establish title to lands claimed under swamp land grants. The Court said that there were involved questions, affecting the interests of the United States which "cannot be tried behind its back."

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[25]The United States is an indispensable party even though it owns less than all the property rights in the subject matter of a suit. *International Postal Supply Co. v. Bruce*, 194 U. S. 601, 606 (1904).

211 U. S. at 78. See also *New Mexico v. Lane*, 243 U. S. 52, 58 (1917).

The United States is no less indispensable even if it is assumed that it holds the property in trust for Alabama and its citizens. *McKay v. Kalyton*, 204 U. S. 458, 469 (1907); *Minnesota v. United States, supra*, 305 U. S. 382 (1939). In the *Minnesota* case the Court said that where the United States holds allotted lands in trust for Indians "it would seem clear that no effective relief can be given in a proceeding to which the United States is not a party and that the United States is therefore an indispensable party to any suit to establish or acquire an interest in the lands." 305 U. S. at 386, note 1. To the same effect is *Louisiana v. Jumel*, 107 U. S. 711, 722-723 (1883), an action against fiscal officers of a State, where the Court said, "If there is any trust, the State is the trustee, and unless the State can be sued the trustee cannot be enjoined."

The requirement that the United States be made a party cannot be circumvented by naming Federal officials as defendants. *Morrison v. Work*, 266 U. S. 481, 485-488 (1925).[26] Indeed, the very nature of the relief here prayed for against the individual defendants points up the fact that the interests of the United States are directly involved. Thus, in asking that the individual defendants be enjoined from "acquiescing" in the claimed assertions

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[26] "To interfere with its management and disposition of the lands or the funds by enjoining its officials, would interfere with the performance of governmental functions and vitally affect interests of the United States. It is therefore an indispensable party to this suit." 266 U. S. at 485-486.

of the defendant States (Complaint p. 30), Alabama is not seeking to prevent their acquiescence *as individuals* but rather as the heads of major departments of the Federal Government. *Cf. Louisiana v. McAdoo*, 234 U. S. 627, 632-633 (1914). Likewise, the request for an injunction with respect to the funds in the hands of the individual defendants is in reality an effort to control property held by the United States. *Goldberg v. Daniels*, 231 U. S. 218, 221-222 (1913); *International Postal Supply Co. v. Bruce*, 194 U. S. 601, 606 (1904); *Louisiana v. Jumel, supra*, 107 U. S. 711, 722-723 (1883); *Mine Safety Appliances Co. v. Forrestal*, 326 U. S. 371, 375 (1945).

The sum of the matter is that the United States is an indispensable party because any decree would affect the interests of the United States. Any decree deciding the rights of the States in the absence of the United States "could have no finality." See *Arizona v. California, supra*, 298 U. S. at 572. The United States has not been sued, and of course it cannot be sued without its consent. *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682 (1949).[27] Where, as here, the complaint if filed would have to be dismissed because of the absence of the United States, the Court should refuse to entertain the complaint. *Louisiana v. McAdoo, supra*, 234 U. S. at 628; *Arizona v. California, supra*, 298 U. S. at 572.

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[27]The general rule that the United States cannot be sued without its consent is applicable to a suit by a State. *Kansas v. United States*, 204 U. S. 331, 342 (1907); *Arizona v. California, supra*, 298 U. S. at 568.

CONCLUSION

On the basis of the foregoing argument, the States of California and Florida respectfully urge that the motion of the State of Alabama for leave to file a complaint should be denied.

Respectfully submitted,

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December 2, 1953.

Affidavit of Service.

I, Leilani Kroll, being first duly sworn, certify that I am over the age of 18 years and not a party to the within action; that on December 2, 1953, I served a copy of the foregoing Objections upon each of the following named individuals by mailing a copy of the Objections to them, postage prepaid, at the following addresses:

Hon. Si Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

LEILANI KROLL.

State of California, County of Los Angeles—ss.

Subscribed and sworn to before me this 2nd day of December, 1953.

KATHRYN BUCKMAN,

Notary Public in and for Said County and State.